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Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOSEPH WARREN MARQUARDT

23011 Moulton Parkway #J-2
Laguna Hills, CA 92653

1123 Lopez Road
Erath, Louisiana 70533

Certified Public Accountant Certificate
No. 34016

Respondent.

Case No. AC-2005-25

OAH No. L - 2005100459

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 21, 2005, Complainant Carol Sigmann, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AC-2005-25 against Joseph Warren Marquardt (Respondent) before the California Board of Accountancy.

2. On or about January 29, 1982, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. 34016 to respondent. The Certified Public Accountant Certificate expired on January 1, 2005, and has not been renewed.

1 3. On or about June 27, 2005, Carrie L. Johnson, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation
3 No. AC-2005-25, Statement to Respondent, Notice of Defense, Request for Discovery, and
4 Government Code sections 11507.5, 11507.6, and 11507.7 to respondent's address of record with
5 the Board, which was and is 23011 Moulton Parkway #J-2, Laguna Hills, CA 92653. A copy of
6 the Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and
7 are incorporated herein by reference.

8 4. Service of the Accusation was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c).

10 5. On or about July 31, 2005, respondent signed and returned a Notice of
11 Defense, requesting a hearing in this matter. The address respondent provided on his Notice of
12 Defense is 1123 Lopez Road, Erath, Louisiana 70533. A Notice of Hearing was served by mail
13 on respondent at 1123 Lopez Road, Erath, Louisiana 70533 and it informed him that an
14 administrative hearing in this matter was scheduled for March 1, 2006. Respondent failed to
15 appear at that hearing. A copy of respondent's Notice of Defense, the Notice of Hearing, and
16 Declaration of Service are attached hereto as Exhibit B, and are incorporated herein by reference.

17 6. Business and Professions Code section 118 states, in pertinent part:

18 "(b) The suspension, expiration, or forfeiture by operation of law of a license
19 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
20 board or by order of a court of law, or its surrender without the written consent of the board, shall
21 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
22 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
23 any ground provided by law or to enter an order suspending or revoking the license or otherwise
24 taking disciplinary action against the license on any such ground."

25 7. Government Code section 11506 states, in pertinent part:

26 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
27 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the

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1 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
2 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

3 8. California Government Code section 11520 states, in pertinent part:

4 "(a) If the respondent either fails to file a notice of defense or to appear at the
5 hearing, the agency may take action based upon the respondent's express admissions or
6 upon other evidence and affidavits may be used as evidence without any notice to
7 respondent."

8 9. Pursuant to its authority under Government Code section 11520, the Board
9 finds respondent is in default. The Board will take action without further hearing and, based on
10 respondent's express admissions by way of default and the evidence before it, contained in
11 Exhibits A, B and C, finds that the allegations in Accusation No. AC-2005-25 are true.

12 10. The total costs for investigation and enforcement are \$17,008.83 as of
13 February 28, 2006. Certifications of Costs (2) are attached as Exhibit C.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, respondent Joseph Warren
16 Marquardt has subjected his Certified Public Accountant Certificate No. 34016 to discipline.

17 2. A copy of the Accusation and the related documents and Declaration of
18 Service are attached.

19 3. The agency has jurisdiction to adjudicate this case by default.

20 4. The California Board of Accountancy is authorized to revoke respondent's
21 Certified Public Accountant Certificate based upon the following violations alleged in the
22 Accusation:

23 a. Respondent is subject to disciplinary action under Code section 5100(c)
24 in that he committed actions constituting gross negligence in the practice of accountancy. The
25 circumstances are that in or about 2002, respondent entered into a contract with H.B. to
26 incorporate H.B.'s business for \$1,200. Respondent was paid in full for the work. Respondent
27 failed to complete the work and/or failed to properly follow-up with the Secretary of State's
28 Office to make certain the documents were filed.

1 b. Respondent is subject to disciplinary action under Code section 5050 in
2 that he practiced accountancy while his license was expired and was not valid. The
3 circumstances are that between January 1, 2003 and July 29, 2003, respondent's license was
4 expired, and that he practiced public accountancy in California as described in Code sections
5 5051 and 5033 without a valid license. Respondent's practice of accountancy included, but was
6 not limited to, one or more of the following: 1) using the initials "C.P.A." on one or more income
7 tax returns prepared for clients; 2) holding himself out as a C.P.A. in the sign at his office and/or
8 on his Internet website; and 3) using the initials C.P.A. on his letterhead.

9 c. Respondent is subject to disciplinary action under Code section 5060 in
10 that he practiced under a fictitious name that was not registered with the Board. The
11 circumstances are that in or about at least 2003 and 2005, respondent practiced accounting in
12 California under the fictitious names "Abacus" and "Abacus Accounting Technologies." Neither
13 of these names was registered with the Board as required by Code section 5060.

14 d. Respondent is subject to disciplinary action under Code section 5100(g)
15 in that he willfully failed to comply with the Board's regulations. Any one or any combination of
16 the following violations of the regulations is itself sufficient to constitute a violation of Code
17 section 5100(g):

18 i. In or about 2004, respondent violated CCR, title 16, section
19 3 by failing to notify the Board about his change of address.

20 ii. In or about 2003, respondent violated CCR, title 16,
21 sections 87, 89 and 94 by failing to comply with continuing education requirements for
22 license renewal and/or failing to obtain and retain documentation to support the
23 continuing education hours he claimed.

24 iii. In or about July, 2003, through August, 2004, respondent
25 violated CCR, title 16, section 52 by failing to respond to inquiries made by Board.

26 ORDER

27 IT IS SO ORDERED that Certified Public Accountant Certificate No. 34016,
28 heretofore issued to respondent Joseph Warren Marquardt, is revoked.

1 Pursuant to Government Code section 11520, subdivision (c), respondent may
2 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
3 within seven (7) days after service of the Decision on respondent. The agency in its discretion
4 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
5 statute.

6 This Decision shall become effective on April 22, 2006.

7 It is so ORDERED March 23, 2006

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10 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
11 DEPARTMENT OF CONSUMER AFFAIRS

12
13 70052210.wpd
14 DOJ docket number:SD2005700286

15 Attachments:

16 Exhibit A: Accusation No. AC-2005-25, Related Documents, and Declaration of Service
17 Exhibit B: Notice of Defense, Notice of Hearing, and Declaration of Service
18 Exhibit C: Certifications of Costs
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Exhibit A

Accusation No. AC-2005-25,
Related Documents and Declaration of Service

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2 SUSAN A. RUFF, State Bar No. 115869
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7 Attorneys for Complainant
8

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CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2005-25

13 **JOSEPH WARREN MARQUARDT**
14 23011 Moulton Parkway #J-2
Laguna Hills, CA 92653

A C C U S A T I O N

15 Certified Public Accountant Certificate No.
16 34016

Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy.

22 2. On or about January 29, 1982, the California Board of Accountancy (Board)
23 issued Certified Public Accountant License Number 34016 to Joseph Warren Marquardt
24 (Respondent). The license expired and was not valid between January 1, 1991, and February 18,
25 1991. Effective February 19, 1991, the license was renewed. The license expired and was not
26 valid between January 1, 1993, and April 25, 1993. Effective April 26, 1993, the license was
27 renewed. The license expired and was not valid between January 1, 1995, and January 29, 1995.
28 Effective January 30, 1995, the license was renewed. The license expired and was not valid

between January 1, 1997, and June 25, 1999. Effective June 26, 1999, the license was renewed. The license expired and was not valid between January 1, 2003, and July 29, 2003. Effective July 30, 2003, the license was renewed. The license expired on January 1, 2005, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following sections of the Business and Professions Code (Code) and Title 16 of the California Code of Regulations (CCR).

4. Section 5100 of the Code states, in pertinent part:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate . . . or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

. . . .

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

. . . .

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter."

5. Section 5050 of the Code states, in pertinent part: "(a) No person shall engage in the practice of public accountancy in this state unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this state on professional business incident to his regular practice in another state or country."

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6. Section 5060 of the Code states:

"(a) No person or firm may practice public accountancy under any name which is false or misleading.

(b) No person or firm may practice public accountancy under any name other than the name under which the person or firm holds a valid permit to practice issued by the board.

(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name other than the name set forth on his or her permit to practice, provided the name is registered by the board, is in good standing, and complies with the requirements of subdivision (a).

(d) The board may adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations designating particular forms of names as being false or misleading."

7. Section 5051 of the Code states: "Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.

(b) Maintains an office for the transaction of business as a public accountant.

(c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.

(d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for

any other purpose.

(e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.

(f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.

(g) Prepares or signs, as the tax preparer, tax returns for clients.

(h) Prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans.

(i) Provides management consulting services to clients.

The activities set forth in subdivisions (f) to (i), inclusive, are "public accountancy" only when performed by a certified public accountant or public accountant, as defined in this chapter.

A person is not engaged in the practice of public accountancy if the only services he or she engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold himself or herself out, solicit, or advertise for clients using the certified public accountant or public accountant designation. A person is not holding himself or herself out, soliciting, or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client."

8. Section 5033 states: "'Certified public accountant' means any person who has received from the board a certificate of certified public accountant and who holds a valid permit to practice under the provisions of this chapter."

9. Section 5107 of the Code states, in pertinent part: "(a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or

violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

10. Section 5109 of the Code states: "The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license."

11. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

12. CCR, title 16, section 3, states, in pertinent part: "Each licensee shall notify the Board of any change in his or her address of record within 30 days after the change."

13. CCR, title 16, section 52, states, in pertinent part: "a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested."

14. CCR, title 16, section 87, states, in pertinent part:

"(a) 80 Hours.

As a condition of active status license renewal, a licensee shall complete at least 80 hours of qualifying continuing education as described in Section 88 in the two-year period immediately preceding license expiration, and meet the reporting requirements specified in subsection (a) of Section 89. A licensee engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code is required to hold a license in active status. No carryover of continuing education is permitted from one two-year license renewal period to another."

15. CCR, title 16, section 89, provides, in pertinent part, that a licensee must obtain and retain certificates regarding continuing education courses taken by the licensee.

1 16. CCR, title 16, section 94, provides that the failure of a licensee to comply with the
2 continuing education rules constitutes cause for disciplinary action under Code section 5100.

3 FIRST CAUSE FOR DISCIPLINE

4 (Gross Negligence)

5 17. Respondent is subject to disciplinary action under Code section 5100(c) in that he
6 committed actions constituting gross negligence in the practice of accountancy. The
7 circumstances are as follows:

8 18. In or about 2002, respondent entered into a contract with H.B. to incorporate
9 H.B.'s business for \$1,200. Respondent was paid in full for the work. Respondent failed to
10 complete the work and/or failed to properly follow-up with the Secretary of State's Office to
11 make certain the documents were filed.

12 SECOND CAUSE FOR DISCIPLINE

13 (Practicing Under an Expired License)

14 19. Respondent is subject to disciplinary action under Code section 5050 in that he
15 practiced accountancy while his license was expired and was not valid. The circumstances are as
16 follows:

17 20. Between January 1, 2003 and July 29, 2003, respondent's license was expired.
18 During that time, on one or more occasions, respondent practiced public accountancy in
19 California as described in Code sections 5051 and 5033 without a valid license. Respondent's
20 practice of accountancy included, but was not limited to, one or more of the following: 1) using
21 the initials "C.P.A." on one or more income tax returns prepared for clients; 2) holding himself
22 out as a C.P.A. in the sign at his office and/or on his internet website; and 3) using the initials
23 C.P.A. on his letterhead.

24 THIRD CAUSE FOR DISCIPLINE

25 (Practicing Under an Improper Fictitious Name)

26 21. Respondent is subject to disciplinary action under Code section 5060 in that he
27 practiced under a fictitious name that was not registered with the Board. The circumstances are
28 as follows:

22. In or about at least 2003 and 2005, respondent practiced accounting in California under the fictitious names "Abacus" and "Abacus Accounting Technologies." Neither of these names was registered with the Board as required by Code section 5060.

FOURTH CAUSE FOR DISCIPLINE

(Willful Failure to Comply With Board Regulations)

23. Respondent is subject to disciplinary action under Code section 5100(g) in that he willfully failed to comply with the Board's regulations, as set forth more particularly in the following paragraph.

24. Any one or any combination of the following violations of the regulations is itself sufficient to constitute a violation of Code section 5100(g):

a. In or about 2004, respondent violated CCR, title 16, section 3 by failing to notify the Board about his change of address.

b. In or about 2003, respondent violated CCR, title 16, sections 87, 89 and 94 by failing to comply with continuing education requirements for license renewal and/or failing to obtain and retain documentation to support the continuing education hours he claimed.

c. In or about July, 2003, through August, 2004, respondent violated CCR, title 16, section 52 by failing to respond to inquiries made by Board.

PRA YER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 34016, issued to respondent;

2. Awarding the Board costs as provided by statute; and

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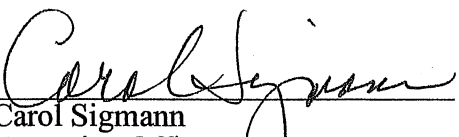
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3. Taking such other and further action as the Board deems proper.

DATED: June 21, 2005


Carol Sigmann
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant